

Before Permod Kohli, J.

SURINDERPAL SINGH AND ANOTHER,—Appellants

versus

DHRUVINDERPAL SINGH AND OTHERS,—Respondents

R.S.A. No. 969 of 2005

9th January, 2008

Code of Civil Procedure, 1908—Suit for declaration—Allegations of fraud made in suit stand established from evidence/material on record mostly documentary evidence—Findings of fact recorded by First Appellate Court based upon valid reasoning and appreciation of evidence/material on record—No interference is warranted even if a different opinion is possible unless findings of fact recorded by First Appellate Court, are perverse—Appeal dismissed.

Held, that none of the defendants whose rights were effected i.e. the plaintiffs in the present suit verified the written statement. As a matter of fact, such a written statement is no written statement in the eyes of law. It has also come on record that the Vakalatnama produced by Surinder Singh, Advocate, had the signatures of sisters of the plaintiffs who were dead long back and their signatures were scored off on the vakalatnama. Apart from the above, there are allegations of fraud made in paragraph 9 and the grounds of the suit and, thus, the allegations stand established from the evidence/material on record mostly the documentary evidence. Therefore, the judgment and decree passed by the learned Lower Appellate Court is based upon valid reasoning and appreciation of evidence/material on record. The learned Lower Appellate Court is final Court of fact and no interference is warranted even if a different opinion is possible unless findings of fact recorded by Learned Appellate Court, are perverse.

(Para 19)

Amit Rawal, Advocate, *for the appellants.*

Arun Palli, Senior Advocate, with Jai Bhagwan, Advocate.

O.P. Nagpal, Advocate.

Dinesh Ghai, Advocate.

PERMOD KOHLI, J.

(1) This judgment of mine will dispose of RSA Nos. 969 and 632 of 2005 as they have arisen out of the same impugned judgment and decree.

(2) RSA No. 969 of 2002 has been preferred by Surinderpal Singh and Satish Kumar who were defendant Nos. 3 and 4 in the suit, whereas RSA No. 632 of 2005 has been filed by S. Surjit Singh, Smt. Tarawrai, Padam Jain, Ashok Jain and Vinod Jain. Appellant No. 1S Surjit Singh was defendant No. 1 in the suit whereas appellant Nos. 2 to 5 are the legal representatives of Ballabh Dass Jain, defendant No. 2 in the suit both the appeals are against the judgment and decree dated 1st November, 2004 passed in Civil Appeal No. 105T/16 October, 2003/3rd December, 2003 by the learned Additional District Judge, Patiala. In RSA No. 969 of 2005, Respondent Nos. 1 to 4 were the plaintiffs in the suit. They are also arrayed as legal heirs of Malwinderpal Kaur, plaintiff No. 3 in the suit.

(3) The plaintiff-respondents herein filed a suit for declaration challenging the judgment and decree dated 30th March, 1989 passed in Civil Suit No. 40 of 27th January, 1989 passed by Mr. N. D. Bhatara, the then Sub Judge 1st Class, Patiala, on the ground that the same has been procured by fraud and misrepresentation and not binding upon the rights of the plaintiffs. A further prayer of permanent injunction was made restraining defendant Nos. 3 and 4 from getting the possession of the property in dispute from defendant Nos. 5 to 7. The allegations made in the plaint are :—

(4) That father of plaintiff Nos. 1 to 4 (Vishvinder Pal Kaur and Upinderpal Kaur daughters of Mohinderpal Singh now deceased) and husband of plaintiff No. 5, migrated from Gujranwala, now

Pakistan and filed a claim for rehabilitation. They were entitled to land in lieu of the land left by them in Pakistan. Defendant Nos. 1 and 2, namely, Surjit Singh and Ballabh Dass Jain, respectively, approached the plaintiffs with an offer to help them in getting the allotment of land representing to be professionals. They asked for a Power of Attorney from the plaintiffs for representing them before the Department of Rehabilitation. A Power of Attorney dated 6th January, 1979 was duly executed and given to them. It is further alleged that the plaintiffs came to know that defendant Nos. 1 and 2 have forged various documents in order to grab the land which was yet to be allotted to them. The defendants had also obtained the signatures of the plaintiffs on various documents including blank vakalatnama, plain papers etc. and the same were used and presented before the Rehabilitation Department. On acquiring the knowledge of the intentions of defendant Nos. 1 and 2, plaintiffs No. 1 to 4 cancelled the Power of Attorney, —*vide* Cancellation deed bearing No. 2183, dated 24th January, 1983, registered with the Sub-Registrar, Mussoorie. Similar, cancellation deed was also made by Pushpinderpal Kaur plaintiff No. 5 at Batala and got the same registered on 8th February, 1983. It is also stated that the plaintiffs thereafter filed two separate suits for permanent injunction titled “Dhruvinder Pal Singh and others *versus* Surjit Singh and others being Civil Suit No. 484T, dated 5th April, 1989 and another suit titled “Pushpinderpal Kaur *versus* Surjit Singh and others being Civil Suit No. 21, dated 3rd April, 1989. Both these suits were decided on 7th December, 1989 by Mr. B.S. Sidhu, the then Sub-Judge Ist Class, Patiala. It is further alleged that the plaintiffs also issued registered notices to defendant Nos. 1 and 2 intimating them regarding the cancellation of their Power of Attorney and for restraining defendant Nos. 1 and 2 from acting as their attorney. It is alleged that notice was received by defendant No. 2, but the service was refused by defendant No. 1. A proclamation to this effect was also published in the newspaper “Arrested Voice” on 5th February, 1985 which was for the information of the General Public about the cancellation of the Power of Attorney’s. The plaintiffs also specifically mentioned that despite the information of the cancellation of the Power of Attorney, defendant Nos. 1 and 2 fabricated an agreement to sell on a piece of paper with respect to the suit land and based upon the said agreement to sell, a suit No. 40 of

1989 for specific performance came to be filed by Surinderpal Singh and Satish Kumar, defendant Nos. 3 and 4 in the present suit. It is alleged that the plaintiffs herein were defendants No. 3 to 7 in Civil Suit No. 40 of 1989 and they were never served in the suit which came to be decreed on 30th March, 1989. It is further stated that, as a matter of fact, no notice was served upon the plaintiffs and they never engaged any counsel nor filed any vakalatnama or written statement. It is averred that the plaintiffs never entered into an agreement to sell in respect to the suit land in favour of defendant Nos. 3 and 4 and the agreement was handiwork of defendant Nos. 1 and 2. They further alleged that they never authorized their attorneys to execute the agreement to sell nor any earnest money was ever received by them. The decree was challenged on the allegations of fraud stating that the vakalatnama produced in the Court also had the signatures of Malwinderpal Kaur and Upinderpal Kaur who died before the date of the filing of the vakalatnama in the Court and their signatures were scored off from the Power of Attorney. It is alleged that this vakalatnama was given to defendant Nos. 1 and 2 in the year 1979.

(5) The suit was contested by defendant Nos. 1 and 2 and 3 and 4 respectively by filing separate written statements. Defendant Nos. 1 and 2 denied the forging of the document including vakalatnama and the agreement to sell. It is alleged that the vakalatnama was given by the plaintiffs with their free consent as and when they required. They also denied the factum of cancellation of the Power of Attorney and pleaded that the agreement to sell was genuinely executed by the plaintiffs and earnest money was paid to them. The allegation regarding Mr. Surinder Singh, Advocate, who is alleged to have appeared on behalf of the plaintiffs (defendants in Civil Suit No. 40 of 1989), are also denied. They also denied that the signatures of Malwinderpal Kaur and Upinderpal Kaur on the vakalatnama were forged. Defendant Nos. 3 and 4 while denying the allegation made in the plaint also pleaded in their written statement that the suit has been filed by the plaintiffs in collusion with defendant Nos. 1 and 2 and that they are *bona fide* purchasers of the land in dispute. Apart from the above, the defendants also pleaded that the suit is not maintainable as the plaintiffs are not in possession of the suit land.

(6) On the pleadings of the parties, the following issues were framed by the learned Trial Court :—

- (1) Whether the judgment and decree dated 27th January, 1989 is illegal, null and void and result of fraud as alleged ? OPP
- (2) Whether the plaintiff is entitled to the decree of declaration as prayed for ? OPP
- (3) Whether the plaintiffs are entitled to the decree of injunction as prayed for ? OPP
- (3-A) Whether the suit is not maintainable as the objection filed by the plaintiffs on execution under Section 47 C.P.C. on the same grounds which have been taken in the present suit, have been dismissed on 7th April, 1993 ? OPD
- (4) Whether the suit is not maintainable ? OPD
- (5) Relief.

(7) The plaintiffs besides examining PW-1 Gurnam Singh, PW-2 Tarsem Chand, PW-3 Manjit Kaur and PW-4 Dhruvinderpal Singh (plaintiff No. 1) also placed on record a number of documents which, *inter-alia*, included the General Power of Attorney dated 6th January, 1979 Exhibit P-1; General Power of Attorney dated 2nd February, 1979 Exhibit P-2; Cancellation deeds Exhibits P-3 and P-4; Notice Exhibit P-5; Dak Register Exhibit P-5/A; Notice dated 19th May, 1984 Exhibit P-5; Notice dated 18th February, 1983 Exhibit P-6; Postal receipts Exhibits P-7 and P-8; UPC Receipts Exhibits P-9 to P-11, copy of the judgment dated 7th December, 1989 Exhibit P-15, Vakalatnama Exhibit P-19; death certificate of Upinderpal Kaur as Exhibit P-19; death certificate of Palwinderpal Kaur as Exhibit P-20; written statement of defendant Nos. 1 and 2 as Exhibit P-23; allotment letter dated 24th June, 1980 as Exhibit P-26 and a number of other documents including interim order passed in Civil Suit No. 40 of 1989.

(8) The learned trial Court decided issue Nos. 3 and 4 regarding maintainability of the suit. It came to the conclusion that the present

suit being simplicitor for declaration and injunction is not maintainable as the plaintiffs were never in possession of the suit land which stands delivered to defendant Nos. 3 and 4 on the basis of the sale deed executed by defendant Nos. 1 and 2 pursuant to the judgment and decree dated 30th March, 1989 in Civil Suit No. 40 of 1989. The trial Court also did not accept the plea of the plaintiffs that the property in question is in possession of defendant Nos. 5 to 7 as lessees thereof under the plaintiffs. Regarding issue No. 3-A, the learned trial Court observed that the decree passed in Civil Suit No. 40 of 1989 was put to execution and the plaintiffs filed the objections in the said execution petition and after that the execution was withdrawn by the Decree Holder, the objections were dismissed. It also observed that the plaintiffs having failed to pursue their objections, dismissal of their objections operate as *res judicata* and the separate suit is not maintainable.

(9) In so far as the merits of the controversy are concerned, the learned trial Court while deciding issue Nos. 1, 2 and 3 observed that the plaintiffs have failed to prove the cancellation of the Power of Attorneys and the communication to defendant Nos. 1 and 2. It also held that the original Power of Attorneys were never produced in Court and no permission was obtained for leading secondary evidence. Even the allegations of the plaintiffs that notices were sent to defendant Nos. 1 and 2 regarding cancellation of the Power of Attorneys requesting them not to act on the basis of the Power of Attorneys, were also not proved. The learned trial Court has also returned a finding that the plaintiff have not challenged the agreement to sell and the consequential sale deed pursuant to the impugned judgment and, thus, they are not entitled to any relief. The suit of the plaintiffs, accordingly, came to be dismissed,—*vide* judgment and decree dated 20th September, 2003.

(10) Aggrieved of the aforesaid judgment and decree, the plaintiffs filed an appeal before the learned Additional District Judge, Patiala, being Civil Appeal No. 105T/dated 16th October, 2003/3rd December, 2003 which has been decided,—*vide* the impugned judgment and decree dated 1st November, 2004. The learned Lower Appellate Court has reversed the judgment and decree dated 20th September, 2003 of the learned trial Court and decreed the suit of the plaintiffs by setting aside the judgment and decree dated 30th March, 1989 passed in Civil

Suit No. 40 of 1989 and directed the revival of Civil Suit No. 40 of 1989 from the stage of filing of the written statement. It also directed the Sub-Judge Ist Class, Patiala, to call for the record of the Civil Suit No. 40 of 1989 and proceed to try the suit by providing opportunities to the plaintiffs who were defendants in the said suit. The learned Lower Appellate Court has been persuaded to set aside the judgment and decree of the learned trial Court on the following facts :—

- (i) The Power of Attorneys in favour of defendant Nos. 1 and 2 were duly cancelled,—*vide* cancellation deeds Exhibits P-3 and P-4. The learned Lower Appellate Court found that the findings of the trial Court regarding in-admissibility of Exhibits P-3 and P-4, are incorrect. The trial Court refused to rely upon these documents on the ground that these documents were copies of cancellation deeds and have not been proved. However, the learned Lower Appellate Court found that the original documents were produced in the Court and these documents are *per se* admissible in evidence. The learned Lower Appellate Court also came to the conclusion that notices were duly sent to defendant Nos. 1 and 2 through post and the original postal receipts are on the record. Notice of cancellation of Power of Attorneys have also been published in the newspaper.
- (ii) Defendant Nos. 1 and 2 were restrained from acting as Attorneys and were directed to surrender the original Power of Attorneys,—*vide* judgment and decree dated 7th December, 1989 whereby they were proceeded *ex parte*.
- (iii) The learned Lower Appellate Court has also observed that the agreement to sell dated 23rd September, 1989 is on a plain paper and seems to be ante dated.
- (iv) Regarding the passing of the decree in Civil Suit No. 40 of 1989 dated 30th March, 1989, the learned Lower Appellate Court has observed that the suit was presented on 27th January, 1989. It was registered and summons were directed to be issued to the defendants on payment of process fee for 15th February, 1989 as also by *dasti* process, as requested.

The addresses of defendant Nos. 3 to 6 (Plaintiffs in the present suit) was given that of Mussoori, whereas that of Pushpinderpal Kaur was that of village Begowal, District Gurdaspur. On the date of hearing i.e. 15th February, 1989, one Surinder Singh, Advocate, appeared on behalf of the defendants and filed written statement almost admitting the claim of the plaintiffs in the said suit. It also observed that the written statement was filed on behalf of all the defendants in the suit and signed by Surjit Singh and Ballabh Dass Jain, defendant Nos. 1 and 2 and Surinder Singh, Advocate, on behalf of defendant Nos. 3 to 7 (plaintiffs in the present suit). The learned Lower Appellate Court also observed that the Vakalatnama produced by Surinder Singh, Advocate, on behalf of defendants in the suit, also have signatures of Upinderpal Kaur and Malwinderpal Kaur, which were scored off. According to the learned Lower Appellate Court, on the basis of the death certificates produced Upinderpal Kaur died on 31st October, 1982 whereas Bhavinderpal Kaur died on 2nd November, 1979. It was, accordingly, concluded that Vakalatnama obtained by defendant Nos. 1 and 2 in the year 1979 has been misused by defendant Nos. 1 and 2 and Surinder Singh, Advocate, was never engaged by the defendants in Civil Suit No. 40 of 1989. Another important fact noted by the learned Lower Appellate Court is that the defendant Nos. 3 to 7 were never sued through attorneys and the written statement has not been signed by any of the defendant Nos. 3 to 7. To the contrary, the same has been signed by Surinder Singh, Advocate. Even during the trial of Civil Suit No. 40 of 1989, after framing of issues, none of the defendant Nos. 3 to 7 appeared as a witness and defendant Surjit Singh appeared as a witness on behalf of all the defendants in his capacity as attorney which had been cancelled. The learned Lower Appellate Court also observed that the agreement to sell being on plain paper was impounded by the Court on charging the penalty, to procure the decree. The learned Lower Appellate Court, accordingly, came to the conclusion that the decree dated

30th March, 1989 in Civil Suit No. 40 of 1989 has been procured by fraud.

- (v) Regarding the maintainability of the suit, the learned Lower Appellate Court observed that question of possession is required to be considered in Civil Suit No. 40 of 1989. It also observed that the objection filed by the plaintiffs in execution, are still pending and, thus, the findings of the learned trial Court on the question of maintainability of the suit have also been set aside.

(11) I have heard the learned counsel for the parties at length and perused the record of the appeal.

(12) Mr. Amit Rawal, learned counsel appearing for the appellants has referred to various judgments.

(13) In RSA No. 969 of 2005, notice of motion was issued on 17th March, 2005. Along with the appeal Civil Miscellaneous Application No. 5421-C of 2005 also came to be filed seeking stay of the proceedings before the Court of Mr. MPS Pahwa, Civil Judge (Senior Division), Patiala, in Civil Suit No. 40 of 1989, which was ordered to be put up along with the main case, but no order came to be passed thereafter. Subsequently, another Civil Misc. Application No. 2235-C of 2007 was also filed seeking the same relief. This application, however, came to be withdrawn on 15th March, 2007 with liberty to approach the trial Court for the requisite relief. It appears that yet another Civil Misc. Application No. 3667-C of 2005 was filed wherein also a notice was issued on 24th April, 2006. While these applications were pending, another Civil Misc. Application No. 3221-C of 2007 was filed for staying the operation of the impugned decree dated 1st November, 2004 and this Court while issuing notice directed that “in the meantime, final order be not pronounced by the trial Court.” I am informed that the proceedings before the learned trial Court in Civil Suit No. 40 of 1989 are otherwise concluded where both parties have led their evidence and only final judgment is to be pronounced which has been stayed by this Court by virtue of order dated 23rd April, 2007. Proceedings in Civil Suit No. 40 of 1989 were initiated pursuant to the impugned judgment and decree whereby the suit was revived from

the stage of the filing of the written statement and despite various applications neither the judgment and decree impugned has been stayed by this Court nor the proceedings in Civil Suit No. 40 of 1989 were stayed. However, by virtue of the order dated 23rd April, 2007 only final pronouncement of the judgment by the trial Court has been stayed in Civil Suit No. 40 of 1989.

(14) Mr. Amit Rawal, learned counsel appearing for the appellants has assailed the findings of the learned Lower Appellate Court on the following grounds :—

- (i) that the suit simplicitor for declaration is not maintainable in view of the provisions of Section 34 of the Specific Relief Act ;
- (ii) that no relief can be granted as the sale deed executed in favour of defendant Nos. 3 and 4 pursuant to the decree dated 30th March, 1989 in Civil Suit No. 40 of 1989, has not been challenged ;
- (iii) that the suit is barred by limitation as the plaintiffs had the knowledge of the filing of the suit. He has referred to **Sita Ram versus Hari Krishan, (1)** wherein it has been laid down that in a suit for declaration and injunction where the plaintiff is not in possession and the relief of possession is not claimed, the suit is not maintainable. He has also relied upon **Smt. Ramti Devi versus Union of India, (2)** wherein the Hon'ble Supreme Court has held that the duly registered document remains valid and binds the parties unless challenged and suit has to be filed within a period of three years from the date when cause of action accrues. He has further referred to the statement of the plaintiff to argue that the plaintiffs had the knowledge of the filing of Civil Suit No. 40 of 1989 and, thus, the suit to challenge the decree dated 30th March, 1989 filed beyond three years, is barred by limitation.

(1) 2000 (1) Civil Court Cases 704 (H.P.)

(2) J.T. 1995 (1) S.C. 223

(15) Mr. Arun Palli, learned Senior Advocate, appearing for the respondents has, however, controverted the aforesaid arguments by referring to the averments made in the plaint. He has referred to the prayer made in the present suit before the learned trial Court wherein it has been mentioned that defendant Nos. 3 and 4 be restrained from taking possession from defendant Nos. 5 to 7 who are in actual possession of the land and claim to be tenants on the land. Based upon this prayer, it is argued that, as a matter of fact, actual physical possession of the land was not with defendant Nos. 3 and 4 but with the defendant Nos. 5 to 7. Thus, there was no necessity of claiming possession in the suit. He has further argued that the sale deed has been executed pursuant to the decree dated 30th March, 1989 and since the decree stands challenged and has been set aside, all consequential action are resultantly non-est and void. The sale deed is not binding upon the plaintiffs, particularly when they are not parties to the document. It is argued that rights of the parties are now dependant upon the outcome of the Civil Suit No. 40 of 1989 which stands revived and trial wherein already stands concluded by virtue of the impugned judgment. Regarding limitation, he has argued that there is absolutely no material on record to show that the plaintiffs had the knowledge of the passing of the decree on 30th March, 1989. He has also referred to Article 59 of the Limitation Act, which reads as under :—

Description of suit :

“59. To cancel or set aside an instrument or decree or for the recession of a contract :

Period of Limitation : Three years.

Time from which period begins to run :—When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.”

(16) Under the aforesaid Article, limitation starts from the date when the facts entitling the plaintiff to have the decree set aside become known to him. According to Mr. Palli, admittedly, the summons were never served upon the plaintiffs in Civil Suit No. 40 of 1989 and, thus,

the limitation would not commence from the date of the decree, but from the date of the knowledge and the suit is within limitation.

(17) Proviso to Section 34 of the Specific Relief Act prevents the Court from passing a decree for declaration where the plaintiffs is able to seek further relief than a mere declaration of title, omits to do so. In the present case, the suit is not for declaration of the title but for declaration that the decree obtained by the defendants in the suit is a nullity and, thus, the embargo on the power of the Court to make a declaration envisaged under proviso to Section 34 of the Specific Relief Act will not be attracted. Otherwise also, the plaintiffs have mentioned in the prayer part that the actual physical possession is with defendant Nos. 5 to 7 in their capacity as tenant and consequently an injunction has been sought against them from handing over the possession to defendant Nos. 3 and 4 and also an injunction against defendant Nos. 3 and 4 from taking possession from defendant Nos. 5 to 7. No material has been placed on record to rebut this averment. Therefore, the arguments advanced by Mr. Rawal is without any substance. The plea that the plaintiffs have not challenged the sale deed is also not of any relevance as the sale deed is the consequence of the decree dated 30th March, 1989 and the plaintiffs are not party to the same. Once the decree itself is declared as non-est and illegal, all follow up actions have to go. In the present case by virtue of impugned judgment and decree and as a consequence of setting aside of decree dated 30th March, 1989, the suit already stands revived and, thus, the sale deed executed by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 is of no consequence as the sale has been made as a result of the decree and loses its existence on account of the setting aside of the decree itself.

(18) The plea that the suit is barred by limitation is totally based upon misconstruction of Article 59 of the Limitation Act. The suit to challenge the decree dated 30th March, 1989 has been filed on 3rd April, 1991 and if limitation starts from the date of the passing of the decree, it is within three years. The contention of Mr. Rawal that the plaintiffs had the knowledge of the proceedings in Civil Suit No. 40 of 1989, does not improve the case of the appellants. It is knowledge of the decree which is relevant and not of the pendency of the proceedings. The knowledge of the pendency of the proceedings may be relevant in

proceedings of Civil Suit No. 40 of 1989 which has been revived, but not in the present suit as, admittedly, the same has been filed within three years from the passing of the decree and the present suit is not barred by limitation. It is lastly contended by Mr. Amit Rawal that the plaintiffs have failed to establish that the decree in Civil Suit No. 40 of 1989, dated 30th March, 1989 was procured by fraud. According to him, there are no specific allegations of fraud. He has also relied upon **A.C. Ananthaswamy versus Boraiah (dead) by LRs. (4)** wherein the Hon'ble Apex Court has made the following observations:—

“4To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot *per se* make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation.”

(19) The learned Lower Appellate Court has noticed in detail the grounds for setting aside the decree dated 30th March, 1989 which I have referred to hereinabove from paragraph (i) to (v). It has been established on record that the plaintiffs were never served in Civil Suit No. 40 of 1989. They were also not sued through their alleged attorney i.e. defendant Nos. 1 and 2 as there is no such averment made in the plaint nor summons were issued through attorney. The attorneys themselves caused their appearance and allegedly also engaged counsel. It is established on record that when the attorneys caused their appearance, their Power of Attorney was validly cancelled through cancellation deeds duly communicated to them and also published in newspaper. Even the written statement filed in the Court has not been signed and verified by the plaintiffs in the present suit, rather the verification has been made by one Surinder Singh, Advocate. It is settled law that written statement can only be verified by the party i.e. the defendants in the suit. In the present case, none of the defendants whose rights were

effected i.e. the plaintiffs in the present suit, verified the written statement. As a matter of fact, such a written statement is no written statement in the eyes of law. It has also come on record that the vakalatnama produced by Surinder Singh, Advocate, had the signatures of sisters of the plaintiffs who were dead long back and their signatures were scored off on the vakalatnama. Apart from the above, there are allegations of fraud made in paragraph 9 and the grounds of the suit and, thus the allegations stand established from the evidence/material on record mostly the documentary evidence. Therefore, I am of the view that the judgment and decree passed by the learned Lower Appellate Court is based upon valid reasoning and appreciation of evidence/material on record. The learned Lower Appellate Court is final Court of fact and no interference is warranted even if a different opinion is possible unless findings of fact recorded by Learned Lower Appellate Court, are perverse. The appellant's efforts to obtain the stay of the judgment and decree impugned or the proceedings in Civil Suit No. 40 of 1989, remained unsuccessful in this Court. It is only the final outcome has been stayed that too on 23rd April, 2007. Mr. Amit Rawal has not been able to dispute that Civil Suit No. 40 of 1989 is at the final stage and only arguments are to be advanced which cannot be done due to interim stay granted by this Court. The allegations of fraud in procuring the decree dated 30th March, 1989 in Civil Suit No. 40 of 1989, have been established, the suit has been revived and is being contested by the parties. It is otherwise also, in the interest of justice and fair play that the said suit be decided on its own merits. No substantial question of law is shown to have arisen.

(20) For the reasons mentioned above as also in view of the serious allegations of fraud, these appeals are, accordingly, dismissed with no order as to costs. The interim stay granted by this Court on 23rd April, 2007 regarding the final pronouncement of the judgment in Civil Suit No. 40 of 1989, is hereby vacated. The trial Court will proceed to decide Civil Suit No. 40 of 1989 according to law.

(21) The record of trial Court be sent back forthwith.

R.N.R.